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Agency Name Public Service Commission	1. Chapter Number 103	2. Date of Filing December 11, 2020
3. Regulation Number 103-811.5	4. Subject of Regulation Role of the Qualified Independent Third-Party Consultant and Expert and the Commissioners' Reliance on the Contents of the Qualified Independent Third-Party Consultant and Expert's Report	
5. Statutory Authority S.C. Code Ann. Section 58-3-140, 58-3-60, and 58-41-20		

6. Type of Filing

- ☐ NOTICE OF GENERAL PUBLIC INTEREST
☐ NOTICE OF DRAFTING
☐ PROPOSED REGULATION
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☒ FINAL REGULATION FOR GENERAL ASSEMBLY REVIEW
☐ RESUBMISSION OF WITHDRAWN REGULATION FOR GENERAL ASSEMBLY REVIEW
☐ FINAL REGULATION EXEMPT FROM GENERAL ASSEMBLY REVIEW

5. For Additional Information, Contact Jocelyn Boyd		6. Telephone Number 803-896-5100
7. Typed Name of Official Jocelyn Boyd	8. Signature of Official 	9. Date December 11, 2020

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December 11, 2020

The Honorable Harvey S. Peeler, Jr.
President of the Senate
213 Gressette Building
Columbia, SC 29201

In Re: Document Number 4988

Dear Senator Peeler:

The Public Service Commission is respectfully submitting Document Number 4988 relating to the role of the qualified independent third-party consultants and experts and the Commissioners' reliance on the contents of the qualified independent third-party consultant and expert's report. Inquiries regarding this regulation should be addressed to me at (803) 896-5100.

Thank you for your attention regarding this matter.

Respectfully Submitted,

Jocelyn Boyd
Chief Clerk/Executive Director

Enclosure



The Public Service Commission State of South Carolina

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December 11, 2020

The Honorable James H. Lucas
Speaker of the House
506 Blatt Building
Columbia, SC 29201

In Re: Document Number 4988

Dear Speaker Lucas:

The Public Service Commission is respectfully submitting Document Number 4988 relating to the role of the qualified independent third-party consultants and experts and the Commissioners' reliance on the contents of the qualified independent third-party consultant and expert's report. Inquiries regarding this regulation should be addressed to me at (803) 896-5100.

Thank you for your attention regarding this matter.

Respectfully Submitted,

Jocelyn Boyd
Chief Clerk/Executive Director

Enclosure

Document No. 4988
PUBLIC SERVICE COMMISSION
 CHAPTER 103

Statutory Authority: 1976 Code Sections 58-3-60, 58-3-140, and 58-41-20

103-811.5. Role of the Qualified Independent Third-Party Consultant and Expert and the Commissioners' Reliance on the Contents of the Qualified Independent Third-Party Consultant and Expert's Report. (New)

Synopsis:

The Public Service Commission of South Carolina proposes to add a regulation which provides a process for the Commission to engage qualified independent third-party consultants and experts. The proposed regulation is necessary to provide guidance as to the role and responsibilities of a qualified independent third-party consultant and expert and the Commissioners' reliance on the qualified independent third-party consultant and expert's report. Act 62 of 2019, or the South Carolina Energy Freedom Act, was signed by Governor Henry McMaster on May 16, 2019. S.C. Code Ann. Section 58-41-20 (I) states, "The commission is authorized to employ, through contract or otherwise, third-party consultants and experts in carrying out its duties under this section, including, but not limited to, evaluating avoided cost rates, methodologies, terms, calculations, and conditions under this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of a third-party consultant or expert authorized by this subsection. The commission shall engage, for each utility, a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided costs for purposes of proceedings conducted pursuant to this section. The qualified independent third party is subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as all other parties. The qualified independent third party shall submit all requests for documents and information necessary to their analysis under the authority of the commission and the commission shall have full authority to compel response to the requests. The qualified independent third party's duty will be to the commission. Any conclusions based on the evidence in the record and included in the report are intended to be used by the commission along with all other evidence submitted during the proceeding to inform its ultimate decision setting the avoided costs for each electrical utility. The utilities may require confidentiality agreements with the independent third party that do not impede the third-party analysis. The utilities shall be responsive in providing all documents, information, and items necessary for the completion of the report. The independent third party shall also include in the report a statement assessing the level of cooperation received from the utility during the development of the report and whether there were any material information requests that were not adequately fulfilled by the electrical utility. Any party to this proceeding shall be able to review the report including the confidential portions of the report upon entering into an appropriate confidentiality agreement. The commission and the Office of Regulatory Staff may not hire the same third-party consultant or expert in the same proceeding or to address the same or similar issues in different proceedings."

The proposed regulation provides, in part, further guidance on the consultant and expert's role to the Commission; the consultant and expert's acknowledgement of ex parte communications law; the consultant and expert's proposed procedural schedule for the timing of the development and issuance of its report; and the weight each Commissioner may give the consultant and expert's report.

The Notice of Drafting regarding this regulation was published on December 27, 2019, in the *State Register*, Volume 43, Issue 12.

Instructions:

Print the regulation as shown below.

Text:103-811.5. Role of the Qualified Independent Third-Party Consultant and Expert and the Commissioners' Reliance on the Contents of the Qualified Independent Third-Party Consultant and Expert's Report.

A. The qualified independent third-party consultant and expert is subject to the ex parte prohibitions contained in Chapter 3, Title 58 of the South Carolina Code, but the qualified independent third-party consultant and expert is not prohibited from communicating with the Commission and with the Commission Staff. The qualified independent third-party consultant and expert shall submit all requests for documents and information necessary to conduct its analysis under the authority of the Commission, and the Commission shall have full authority to compel responses from parties to the request. The qualified independent third-party consultant and expert's duty will be to the Commission. No communications between the qualified independent third-party consultant and expert and any party regarding an issue before the Commission should be communicated without notice to all parties to the proceeding.

B. All communications between any party and the qualified independent third-party consultant and expert must be communicated to all parties contemporaneous with the original communication.

C. Upon retention by the Commission, the qualified independent third-party consultant and expert shall sign an acknowledgement of the ex parte prohibitions in Chapter 3, Title 58 of the South Carolina Code.

D. The qualified independent third-party consultant and expert shall submit a proposed procedural schedule for the timing of the development and issuance of its final report and its intended approach to complying with the ex parte prohibition provisions in carrying out its responsibilities to the Commission.

E. The role of the qualified independent third-party consultant and expert's duty is to advise the Commission and its role includes modeling its own data inputs and calculations via an independent analysis of an electrical utility's avoided cost. The role of the qualified independent third-party consultant and expert is not to rely solely on inputs from the utility or any other party so as to be constrained to working from the utility's or any other party's avoided cost data, inputs, and assumptions.

F. All parties shall receive the final report at least ten (10) days prior to the Commission's vote in the proceeding. Parties must be given a reasonable opportunity to respond in writing to the final report prior to the Commission's vote in the proceeding. The qualified independent third-party consultant and expert's duty is to the Commission, and the qualified independent third-party consultant and expert is not subject to responding to discovery, may not be deposed, will not be cross-examined or called to testify before the Commission.

G. The final report shall be included in the record and considered evidence along with all other evidence in the proceeding and will be given the appropriate weight as the Commission may with any evidence in the record.

Fiscal Impact Statement:

The Commission anticipates utilizing its existing resources to implement the proposed regulation. Other than the costs the Commission will incur to retain and compensate a qualified independent third-party consultant, the Commission anticipates utilizing its existing resources to execute or effectuate the provisions of the proposed regulation.

Statement of Rationale:

The purpose for Regulation 103-811.5 is to document the role of qualified independent third-party consultants and experts and the Commissioners' reliance on the contents of the qualified independent third-party consultant and expert's report. Adoption of this Regulation will result in a regulation which outlines the role of qualified independent third-party consultants and experts and how the Commission utilizes the qualified independent third-party's consultant and expert's report. There was no scientific or technical basis relied upon in the development of this regulation.